Charter School Administration Services, Inc. *and* Michigan Education Association/NEA, Petitioner. Case 7–RC–23108

September 30, 2008

DECISION ON REVIEW AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

This case involves an election petition filed by a labor union seeking to represent teachers and counselors employed at a public charter school. On June 15, 2007, the Regional Director for Region 7 issued a Decision and Order finding that the Employer, Charter School Administration Services, Inc., is exempt from the jurisdiction of the National Labor Relations Board because it is a political subdivision of the State of Michigan within the meaning of Section 2(2) of the National Labor Relations Act. Accordingly, the Regional Director dismissed the petition. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review. On August 15, 2007, the Board granted the Employer's request for review. The Employer and the Petitioner filed briefs on review.

Having carefully considered the entire record, including the briefs on review, we find, contrary to the Regional Director, that the Employer is not a political subdivision. We find that the Employer is an "employer" within the meaning of Section 2(2) of the Act, and that the Employer is subject to the Board's jurisdiction. Accordingly, we reinstate the petition and remand this case to the Regional Director for further processing.[1]

I. FACTS

A. Background

The Employer is a private, for-profit corporation established under the laws of Michigan, and is engaged in the management of charter schools in several states, including Michigan.[2] The Academy of Waterford (Academy or the school) is a Michigan public charter school that contracted with the Employer to operate and manage the Academy and to hire and supervise the school's teaching staff. The Petitioner seeks to represent teachers and counselors who are employed by the Employer and who work at the Academy.[3]

B. The Academy of Waterford

The Academy was established by Bay Mills Community College (BMCC) as a public school academy, more commonly known as a charter school, under the provisions of the Michigan Revised School Code.[4] BMCC granted the Academy its charter, which outlines how the Academy is to operate, retains "oversight authority" of the Academy, and is responsible to the Michigan Department of Education for overseeing the operations and performance of the Academy, and for the Academy's compliance with its charter and all applicable laws. BMCC has the authority to appoint and remove members of the Academy's board of directors, to hold the Academy's board of directors accountable for providing quality education, and to revoke the Academy's charter if necessary. BMCC, acting as the Academy's fiscal agent, receives and distributes State education funds to the Academy, which uses the funds to pay its operating expenses. In return for exercising its oversight and fiscal agent responsibilities, BMCC receives a fee equal to 3 percent of the funds that the Academy receives from the State of Michigan.

The Academy was incorporated as a non-stock, nonprofit, tax-exempt corporation under Michigan's Nonprofit Corporation Act. The Academy's board of directors, appointed by BMCC, manages the Academy's business, property and affairs, and sets the Academy's educational, fiscal, and administrative policies, following the terms of the Academy's charter. The Academy's board of directors is responsible for the Academy's compliance with its charter and with all applicable laws. The Academy has four officers selected from among the sitting board members. The Academy is considered a government agency under the Revised School Code and its incorporator, board members, officers and employees have government immunity. Members of the Academy's board of directors take an oath as public officials.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] The parties stipulated that the Employer is a Michigan corporation engaged in the operation of charter schools in several states, and that, during the calendar year 2006, the Employer derived gross revenues in excess of one million dollars, and purchased goods in excess of $50,000 from entities located outside the State of Michigan.

[3] The parties stipulated that the appropriate unit for bargaining includes all full-time and regular part-time teachers and counselors employed by the Employer at the Academy, excluding all other employees.

[4] See Mich. Comp. Laws Ann. Sec. 380.501 et seq.

Because the State has statutorily deemed the Academy to be a government agency,[5] the Academy is required to comply with Michigan's Open Meetings Act, Freedom of Information Act, and Public Employment Relations Act. The Academy is required to submit a number of educational, operational, and financial reports to BMCC, and its financial statements are audited annually by an independent auditor. All of the Academy's reports, records, and audits become public information under the State's Freedom of Information Act.

Upon the Academy's establishment, its board of directors determined how many grades to offer (K-8) and how many teachers were necessary. The board of directors approved the first curriculum which was developed by the Employer. Although the Academy was authorized to directly hire and manage its own instructional staff, the Academy chose to contract with the Employer, an educational services provider, to provide individuals to work at the Academy.[6] In February 2003, the Academy entered into a management agreement with the Employer for the operation and management of the Academy. The Academy's board of directors approved the management agreement, and retained the authority to "make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and carrying on of the Academy."[7]

C. Charter School Administration Services

As noted, the Employer is a Michigan for-profit corporation, and was incorporated by a sole individual pursuant to the Michigan Business Corporation Act to provide educational and management services to public school academies.[8] The Employer provides educational management services to charter schools in several states, including Michigan.

The Employer's business is overseen by its board of directors. Members of the board of directors are elected by the corporation's shareholders, who also have the power to remove a director with or without cause.[9] The board of directors appoints and may remove the Employer's corporate officers, which include a president, secretary, and treasurer. Members of the board of directors and the corporate officers are bound to discharge their duties in good faith and "[i]n a manner [they] reasonably believe[] to be in the best interests of the corporation."[10]

The Employer, as a private corporation, is not subject to Michigan's Open Meetings Act or Freedom of Information Act. Thus, the Employer's meetings are not open to the public; its corporate documents, such as financial records and audits, are not public records; and the Employer has no direct reporting requirement to the State. There is no State requirement that the Employer be audited, and the Employer's corporate budget is not subject to review or approval by any entity other than the Employer's own board of directors. The Employer derives its taxable revenues from fees paid to it by the charter schools it manages, and does not directly receive any State funds.

The Employer's corporate business operations are conducted by its president/chief financial officer, several vice presidents, a superintendent who oversees all charter schools that the Employer manages, various regional directors who maintain direct contract with the principals of the charter schools the Employer manages, and the individual principals of each school. The Employer also maintains administrative, curriculum, and accounting departments. The Employer's employees do not take a public oath and do not enjoy government immunity.

D. Agreement between the Employer and the Academy

The relationship between the Employer and the Academy is governed by the terms of their February 2003 management agreement, which vests in the Employer responsibility not only for the management, operation, and administration of the Academy, but also for the educational services the Academy provides to its students.[11] Thus, the Employer has many responsibilities, including

[5] Mich. Comp. Laws Ann. Sec. 501.(1) states that "[a] public school academy is a body corporate and is a governmental agency."

[6] The Michigan Revised School Code permits a public school academy to "enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance of the public school academy." Mich. Comp. Laws Ann. Sec. 380.504a(e). The Academy's charter permits the Academy to "contract with a service provider to implement the Academy's educational program," and further states that the service provider "will be responsible for the performance of the Academy and will be accountable to the Academy Board," including regularly reporting to the Academy's board of directors.

[7] The Academy's charter states that members of its board of directors may not include any director, officer or employee of an educational services provider that enters into a contract with the Academy.

[8] Most of the information about the Employer's corporate operations is taken from the Michigan Business Corporation Act, which applies to all private corporations. See Mich. Comp. Laws Ann. Sec. 450 et seq.

[9] Upon its incorporation, the Employer was authorized to issue 60,000 shares of common stock. Although the record does not state how many directors are on the Employer's board, the Business Corporation Act provides that the board must consist of at least one member.

[10] The Employer's Articles of Incorporation specify the circumstances under which a director of the corporation shall be personally liable "to the corporation or its shareholders for breach of fiduciary duty as a director."

[11] The agreement specifically states that the Employer is a for-profit corporation while the Academy is a government entity, and that neither the Employer nor the Academy is a division of or a part of the other. There is no overlapping ownership between the parties; the Employer is not a party to the Academy's charter; and the Employer has no authority to modify the terms of the charter.

the implementation and administration of the Academy's educational program; the professional training and development of the Academy's teachers; the management of all personnel functions pertaining to the Academy; and the maintenance and operation of the Academy's school building. The Employer is also responsible for all aspects of the Academy's business administration, including the preparation of reports that the Academy is required to submit to the State.[12]

The management agreement requires that the Employer prepare a proposed annual budget for the Academy based on its projected student enrollment. The Open Meetings Act requires that a public hearing be held on the Academy's proposed budget, after which the proposal is submitted to the Academy's board of directors for approval. The Employer has no approval or disapproval authority over the Academy's budget; rather, the Employer's only responsibility is to prepare and propose a school budget to the Academy's board of directors. The Employer followed this procedure in preparing the Academy's first budget. The management agreement also requires that the Employer develop the Academy's curriculum which, after approval by the Academy's board of directors, the Employer is required to implement, monitor, and update as necessary during the school year.

The day-to-day operation of the Academy is the responsibility of the Academy's principal, who also has the authority to hire and supervise the Academy's staff. The Employer has the sole responsibility to "select, evaluate, assign, discipline and transfer personnel," including the Academy's principal and teachers.[13] No one affiliated with the Academy, including its board of directors, and no one affiliated with BMCC, has any involvement in personnel issues involving the individuals the Employer has hired to work at the Academy. The management agreement specifically provides that *all* Academy personnel are solely the employees of the Employer, and, accordingly, all Academy personnel are accountable only to the Employer. For example, it is solely the Employer that determines (1) who should be employed as a teacher or other staff member at the Academy, although the Employer is required by the State to perform a criminal background check on all potential employees;[14] (2) what the pay scale and salaries of individual staff members are to be; and (3) whether a particular teacher should be disciplined or get a raise. Even in cases of severe teacher misconduct, such as assaulting a student, it is the Employer that has the sole authority to discipline that teacher, not the Academy or its board of directors. Although there may be communication between the Academy's board and the Employer on personnel issues, ultimately the Academy's board has no authority to require the Employer to discipline or discharge an offending employee. The Employer's employees who work at the Academy are accountable only to the Employer, not to the Academy or to BMCC.

Academy personnel are paid by the Employer, and are eligible for benefits such as health insurance through the Employer. As the Academy's teachers are employed by a private corporation and not by the public school system, they are not eligible to participate in the Michigan Public School Employees Retirement System. The Employer funds its own pension plan with contributions from its employees, and the Employer contributes matching funds.

The Employer is paid a fee by the Academy in the amount of 12 percent of the funds that the Academy receives from various State and Federal sources. The Employer itself does not directly receive, from any governmental source, any public school funds; such funds go to BMCC as the Academy's fiscal agent, and BMCC, in turn, transmits public funds to the Academy. The Employer either pays directly or is reimbursed by the Academy for all costs associated with operating the Academy, including teachers' salaries, books, equipment, and building/maintenance.

II. THE REGIONAL DIRECTOR'S DECISION

The Regional Director found that the Board properly could assert jurisdiction over the Employer, despite its relationship with a governmental entity, i.e., the Academy, unless the Employer is itself a political subdivision of the State of Michigan within the meaning of Section 2(2) of the Act, in which case it would be exempt from the Board's jurisdiction. The Regional Director found that the Employer has a "strong relation to the State," and is "administered by individuals who are responsible to public officials or the general electorate." The Regional Director concluded that the Employer is a political

[12] For example, the Academy is required to submit certain reports to the State Department of Education. Additionally, the Employer prepares financial reports and works with an independent auditor that the Academy's board of director selects to complete a required annual audit.

[13] The management agreement further states that the Employer will have the authority to hold the Academy's principal accountable for the success of the Academy; that the principal's duties and compensation shall be determined by the Employer; and that the principal and the Employer may select and hold accountable the Academy's teachers and other staff members.

[14] There is one exception to the provision that the Employer has sole control over hiring the Academy's teachers: If a job applicant had a criminal record that included a non-sex related felony, the Academy's board of directors would have to approve that applicant's employment. The Employer is prohibited by law from hiring an individual who has committed certain sex-related offenses.

subdivision of the State of Michigan within the meaning of Section 2(2) and, accordingly, is exempt from the Board's jurisdiction.

III. THE PARTIES' CONTENTIONS

The Employer and the Petitioner both agree that the Board has jurisdiction over the Employer. First, the parties contend that, contrary to the Regional Director's findings, the Employer is not exempt from the Board's jurisdiction as a political subdivision. They emphasize that inasmuch as it is the Employer's shareholders, and not the Academy, BMCC or any other governmental entity, who appoint the Employer's board of directors, the Employer is not administered by individuals who are responsible to public officials or to the general electorate. Second, both the Employer and the Petitioner agree that the Employer, without regard to its contract with the Academy, meets the statutory definition of "employer," and meets the applicable monetary jurisdictional standard. The Employer and the Petitioner emphasize that the Board commonly asserts jurisdiction over private employers acting as government contractors.

IV. ANALYSIS

The primary issue in this case is whether the Employer, a private, for-profit corporation that has a contract with a government entity to provide services, is exempt from the Board's jurisdiction as a political subdivision of the State of Michigan within the meaning of Section 2(2) of the Act. Section 2(2) excludes from the definition of "employer" "any State or political subdivision thereof." In determining whether an entity is a political subdivision, the Board applies the test described in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604–605 (1971) (*Hawkins County*). Under that test, an entity is exempt from the Board's jurisdiction as a political subdivision if it is either (1) created directly by the State so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

There is no dispute that the Employer does not come within the first analytical prong of *Hawkins County* because it was not created directly by the State of Michigan so as to constitute an arm of the government.[15] In turn, we find that the Employer is not exempt under the second analytical prong of *Hawkins County*. The Employer is administered by a board of directors, corporate officers, and various administrators. The record fails to show that any of these administrators are responsible to any public official or to the general electorate within the meaning of *Hawkins County*.

In determining whether an entity is "administered" by individuals responsible to public officials or to the general electorate, the relevant inquiry is whether the individuals who administer the entity are appointed by and subject to removal by public officials. *Research Foundation of the City University of New York*, 337 NLRB 965, 969 (2002); *Hawkins County*, 402 U.S. at 605. "In following *Hawkins County*, the Board has continued to consider the relationship between the employer's governing body and the Governmental agency to which it is linked. The Board has continued to find it significant if a majority of an employer's board of directors is composed of individuals responsible to public officials or individuals responsible to the general electorate." *Regional Medical Center at Memphis,* 343 NLRB 346, 359 (2004). The "courts and the Board generally consider whether a majority of the employer's governing body—the governing board and executive officers—is appointed by or subject to removal by public officials." *Aramark Corp. v. NLRB*, 156 F.3d 1087, 1093 (10th Cir. 1998), vacated in part on rehearing en banc 176 F.3d 872 (10th Cir. 1999).[16] Specifically, the Board looks to whether the composition, selection and removal of the employer's board of directors are determined by law or by the employer's own governing documents. *Research Foundation*, 337 NLRB at 969.

The Board routinely has asserted jurisdiction over private employers who have agreements with government entities to provide certain types of services. For example, in *Research Foundation*, supra, the employer was a private, non-profit corporation that had a contract with the City University of New York (CUNY), a public university. The Board found, inter alia, that the employer was not an exempt political subdivision where the employer was administered by its own board of directors, whose appointment and removal were governed by the employer's own by-laws, not by any law or statutory provisions. In *Connecticut State Conference Board, Amalga-*

[15] No party raises the issue of whether the Academy, as a Michigan public charter school, is itself exempt as a political subdivision. We have assumed, as do the parties, that, for the purposes of this Decision, the Academy is an exempt institution.

[16] In *Aramark*, a panel of the court of appeals found that Aramark Corporation was not exempt as a political subdivision. The panel did not uphold the Board's further finding that the employer was subject to the Board's jurisdiction under *Management Training Corp.,* 317 NLRB 1355, 1358 (1995), finding that the case was controlled by the Tenth Circuit's governmental control test, which the panel felt bound to apply under Circuit custom. After rehearing, the court, sitting en banc, did not disturb the panel's finding that Aramark was not exempt, but found that the Board need not apply the governmental control test before exercising jurisdiction under Sec. 2(2) of the Act, and, instead, agreed that the Board's *Management Training* test was a reasonable exercise of its authority to interpret the Act.

mated Transit Union, 339 NLRB 760 (2003), the Board asserted jurisdiction over a private employer that had a contract with the State of Connecticut to provide public bus service, where the employer's managers were not responsible to public officials or the general electorate. In *Enrichment Services Program*, 325 NLRB 818 (1998), the Board found that a private employer was not an exempt political subdivision where less than a majority of the members of its board of directors were public officials or individuals responsible to the general electorate.

The sole focus here, therefore, is on the composition of the Employer's board of directors and to whom the members of the Employer's board are accountable. We examine only the operations of the Employer, which itself is not a public charter school, and not the operations of the Academy or BMCC.[17] The members of the Employer's board of directors are elected by the Employer's shareholders, who also have the power to remove a director with or without cause. The Employer's corporate officers are elected or appointed by and subject to removal by the Employer's board of directors. There is no dispute, as the Regional Director recognized, that the Employer, and not the Academy or BMCC, appoints its own board of directors and that the Employer's board members and officers are not controlled by the Academy or BMCC. No individual responsible for the Employer's operations—no member of the Employer's board of directors, no member of the Employer's executive board, and no member of the Employer's administrative staff—is appointed by and subject to removal by any public officials. There is no indication that the Employer's board of directors or its corporate officers have "direct personal accountability to public officials or the general electorate."[18] *Cape Girardeau Care Center, Inc.*, 278 NLRB 1018, 1019 (1986) (employer was not exempt as a political subdivision where county approval of board of directors was ministerial and there was no evidence that board of directors had "direct personal accountability" to public officials or to the general electorate); *Aramark Corp. v. NLRB*, 156 F.3d at 1093 (company that provided food service operations to county school district and military college not an exempt political subdivision).[19]

Simply stated, no person affiliated with the Academy, BMCC, the relevant school district, the Michigan Department of Education, nor any other local or State official, has any involvement in the selection or removal of any members of the Employer's governing board, or in the hiring of the Employer's administrative staff. The members of the Employer's board of directors are appointed by and subject to removal *only* by private individuals and not by public officials. Given the undisputed method of appointment and removal of board members, we find that none of the board members are responsible to public officials in their capacity as board members, and that, therefore, the Employer is not "administered" by individuals who are responsible to public officials or the general electorate.[20]

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[17] That the Employer does not receive public funds directly, does not need public approval for its corporate budget, and is not subject to the same "sunshine laws" as the Academy, reinforces the private nature of the Employer's corporate enterprise. *Research Foundation*, 337 NLRB at 970 (although private employer submitted financial plans and reports to government entities, there was no evidence that the employer's management was responsible to those government entities for the employer's own budgetary or daily financial operations, where those operations were implemented by the employer's own managers and supervisors).

[18] The court's opinion in *Truman Medical Center, Inc. v. NLRB*, 641 F.2d 570 (8th Cir. 1981) is particularly applicable. In that case, 18 of 49 members of the private employer's board of directors, far less than a majority, were appointed by or associated with a governmental body. The court emphasized, however, that "the directors determine policy by majority vote and the votes of the government directors are no more significant than the votes of the other directors. Decisions by the board are not subject to approval by any governmental body and are not communicated to City, County or University officials other than those on the board itself. The responsibility of the board of directors to [governmental entities] . . . derives from the contractual relations between [the employer] and these political subdivisions, and *is not the sort of direct personal accountability to public officials or to the general public required to support a claim of exemption under Sec. 2(2).*" Id. at 573 (emphasis added).

[19] In affirming the Board's finding that Aramark was not exempt as a political subdivision, the court considered it implicit that the Board had focused on Aramark as a national corporation rather than focusing solely on Aramark's specific operations in the county and at the college. The court reiterated that "in considering whether an entity is a political subdivision . . . the Board and courts examine the entity's governing body, rather than focusing solely on the specific operation's administrators or management personnel. . . . [A]n employing entity is not transformed into a political subdivision based solely on government involvement in the administration of a specific operation undertaken by an otherwise private corporation." *Aramark Corp.*, 156 F. 3d at 1094.

[20] The Regional Director recognized that the Employer is a private corporation whose administrators are not directly appointed or removed by public officials. However, the Regional Director found that "the public accountability of the Employer in its operation of the Academy became transparent" when an investigation by BMCC of the Academy and the Employer revealed certain irregularities. The Regional Director found that if the Employer had not agreed to make the corrections that BMCC proposed to correct the situation, BMCC intended to close the Academy. The Regional Director further found that, if BMCC closed the Academy, the Employer's agreement with the Academy would have ended, resulting in "the public removal of all Employer administrators of the Academy." The Regional Director also pointed out that as the Employer had not signed off on the corrections as of the date of the hearing in this case, "this result could still occur." We do not agree with the Regional Director that this evidence bears on the Employer's political subdivision status. It would be a rare government contract that did not afford the government oversight of the contract, and the ability of the government to correct or cancel a contract does not, without more, change the private nature of the contracting entity. See, e.g., *Aramark Corp. v. NLRB*, 179 F.3d at 878, where the court, referring to Aramark's contract with The Citadel, stated that Section 2(2) of the Act

We conclude, therefore, that the Employer is not a political subdivision under the second analytical prong of *Hawkins County*, and, accordingly, the Employer is not exempt from the Board's jurisdiction on that basis.[21] Consequently, the only remaining jurisdictional question is whether the Employer is itself an "employer" within the meaning of Section 2(2) of the Act. *Management Training Corp.*, 317 NLRB 1355, 1358 (1995) (Board will assert jurisdiction over a private employer that has a contract with a government entity if the employer itself meets the statutory definition of "employer"). There is no dispute that the Employer here "controls some matters relating to the employment relationship involving the petitioned-for employees."[22] In fact, there is no dispute that the Employer controls *every* aspect of its employment relationship with the petitioned-for employees.

As the Employer meets the *Management Training* requirement that it "control some matters relating to the employment relationship" of the petitioned-for employees, we find that the Employer is an employer within the meaning of Section 2(2) of the Act.[23] As the Employer satisfies the Board's monetary jurisdictional standards, we find that the Board should assert jurisdiction over the Employer. Accordingly, we shall reinstate the petition and remand the case to the Regional Director for further processing.

ORDER

The Regional Director's dismissal of the petition is reversed. Therefore, we reinstate the petition and remand the case to the Regional Director for further appropriate action.

Dated, Washington, D.C. September 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

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"exempts only government entities or wholly owned government corporations from its coverage—not private entities acting as contractors for the government."

[21] The Regional Director also opined that the assertion of jurisdiction over the Employer would create "policy and legal issues unique to education involving State legislation and outside the Board's expertise and mission." The Regional Director cited as an example that the State prohibits public school teachers from striking and from bargaining over certain subjects that may be mandatory bargaining subjects under the Act. We do not agree. First, it is clear that the provision of education is not a unique state function. See, e.g., *Logiodice v. Trustees of Maine Central Institute*, 296 F.3d 22 (1st Cir. 2002). See generally French, *Charter Schools: Are For-Profit Companies Contracting for State Actor Status?,* 83 U. Det. Mercy L. Rev. 251 (2006). Second, the State of Michigan has chosen to set up a dual system of operation of charter schools: such schools can either hire their own employees, or contract with private employers to supply such employees. Such a dual system is not unusual. The Board addressed similar concerns in a national security setting in *Firstline Transportation Security, Inc.,* 347 NLRB 447 (2006). The Transportation Security Administration (TSA) was charged with providing security screening functions at the nation's airports, and employed Federal employees as screeners. The TSA also entered into contracts with private employers, such as Firstline, to perform security screening functions at airports. Federal legislation prohibited all screeners from going on strike, and prohibited private screeners from bargaining over some subjects that would be mandatory subjects of bargaining under the National Labor Relations Act. The Board determined that it should assert jurisdiction over private employers providing screening services, even though there might be disparities in employment between Federal and private employees, and even though private employees would have different rights under the Act, including the right to organize and bargain. The Board specifically stated that "the Employer's relationship to its employees is similar to the multitude of other relationships between government contractors and their employees that are currently governed by the Act." Id. at 456. Just as Federal legislation permitted TSA to subcontract its screening functions to private employers, so too did the Michigan Revised School Code permit public charter schools to contract with private employers to provide school services. We see no policy or legal issues in the public charter school setting that would warrant denying employees their Section 7 rights.

[22] *Recana Solutions*, 349 NLRB1163, 1164 (2007) ("t]he employer in question must, by hypothesis, control some matters relating to the employment relationship, or else it would not be an employer under the Act"), citing *Management Training*, 317 NLRB at 1358.

[23] The Board routinely asserts jurisdiction over private employers that provide services to public entities. See, e.g., *Recana Solutions*, supra (private employer that had a contract with the City of Dallas, Texas to provide temporary day laborers); *Connecticut State Conference Board*, supra, 339 NLRB 760 (private employer that managed and operated a bus system pursuant to a contract with the State of Connecticut); *Bergensons Property Services*, 338 NLRB 883 (2002) (private employer that provided cleaning services to the University of California at San Diego); *Corrections Corp. of America*, 330 NLRB 663 (2000), enfd. 234 F.2d 1321 (D.C.Cir. 2000) (Delaware corporation that operated and managed prisons in Puerto Rico); *Correctional Medical Services*, 325 NLRB 1061 (1998) (private employer that provided health care services at prisons pursuant to a contract with the State of Illinois); and *R & W Landscape*, 324 NLRB 278 (1997) (private corporation that provided cleaning and landscaping services under a contract with the Massachusetts Bay Transportation Authority).

Furthermore, courts of appeals have regularly agreed with the Board's assertion of jurisdiction over such private employers. See, e.g., *Aramark Corp. v. NLRB*, supra (private corporation that had contracts with a county in Florida and with The Citadel, a military college owned and operated by the State of South Carolina); *Pikeville United Methodist Hospital of Kentucky, Inc. v. United Steel Workers of America*, 109 F.3d 1146 (6th Cir. 1997) (private entity that operated a hospital under a lease from the city); *Teledyne Economic Development v. NLRB*, 108 F.3d 56 (4th Cir. 1997) (private employer that operated a Job Corps Center under a contract with the Department of Labor); and *NLRB v. Federal Security, Inc.,* 154 F.3d 751 (7th Cir. 1998) (private employer hired by the Chicago Housing Authority to provide security services).